

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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SEP. 08 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the )  
Subscriber Changes Provisions )  
of the Telecommunications Act )  
of 1996 )  
 )  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )  
 )  
Excel Request for Waiver )

CC Docket No. 94-129

**PETITION FOR EXPEDITED WAIVER**

Excel Telecommunications, Inc. ("Excel"), Telco Holdings, Inc. d/b/a Dial & Save ("Dial & Save") and Long Distance Wholesale Club, Inc. ("LDWC") (collectively, the "Petitioners"), by their attorneys and pursuant to Section 1.3 of the Commission's Rules, respectfully petition the Commission to grant a limited waiver of 47 C.F.R. Sections 64.1100 – 64.1190 as required to transfer the presubscribed residential and small business customers of Dial & Save and LDWC (combined, the "Telco Companies") to Excel without first obtaining each subscriber's authorization and verification.<sup>1</sup> In addition, Petitioners respectfully request expedited treatment of this petition, to the extent necessary, to allow Petitioners to effectuate the proposed transfer on or before *October 15, 1999*.

<sup>1</sup> Pursuant to 47 C.F.R. §64.1150, prior to submitting a preferred carrier change, carriers must either: (1) obtain the subscriber's written and signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided for the exclusive purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.

Each Petitioner is a direct or indirect subsidiary of Excel Communications, Inc. (“ECI”). ECI is a holding company which ultimately is owned by Teleglobe, Inc. The Telco Companies seek authority to transfer all of their presubscribed residential and small business long distance customers to a single operating company – Excel.<sup>2</sup> As demonstrated herein, it is in the public interest for the Commission to allow Petitioners to transfer these presubscribed customers of the Telco Companies to Excel without first obtaining each subscriber’s express prior authorization and verification.

The initial and primary business of the Telco Companies was to solicit “dial around” long distance customers, and much of their revenue continues to be derived from that source. “Dial around” customers place their long distance calls by using access codes, and not through use of “1+”, presubscribed dialing. However, over time, the Telco Companies also succeeded in attracting thousands of customers nationwide to their presubscribed long distance products. The Telco Companies obtained the prior authorization of those customers before presubscribing them to the Telco Companies’ network, in accordance with the Commission’s Rules.

Excel acquired the Telco Companies in November, 1997, through a merger transaction. Since that time, the Petitioners have attempted to integrate their networks and back-office systems to realize the efficiencies contemplated in the merger and to provide superior customer service and products to their customers. Petitioners have made extensive progress in achieving these goals, including the provision of centralized customer service functions to all

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<sup>2</sup> The Petitioners’ current intention is to transfer all or most of the presubscribed residential and small business customer base of the Telco Companies to Excel, although the specific list of business customers subject to migration has not been finalized. Larger commercial accounts which are customers of the presubscribed services of the Telco Companies will not be migrated at this time.

customers of the various operating companies. In addition, Petitioners have spent millions of dollars creating a new billing system which will allow them to address Y2K issues, provide superior billing and customer support, and remain competitive in the telecommunications market.

Unfortunately, it has become evident that the Telco Companies' legacy billing systems no longer can support the increasingly complex tasks required of it; nor can it reasonably be integrated into Excel's new billing system without seriously endangering the expected delivery date and compromising much of the anticipated efficiency. Due to the instability and inefficiency of their legacy billing systems, if the Telco Companies are unable to transfer their presubscribed residential and small business customers to Excel, they may have to discontinue providing service to them, potentially resulting in affected customers losing presubscribed services and/or paying significantly higher casual calling rates.

The proposed migration of residential and small business customers of the Telco Companies to Excel will avoid these problems. The migration also will eliminate the need for redundant billing systems originally created for separate entities now under common ownership. By merging the systems, all presubscribed residential and small business long distance traffic will be billed under the Excel logo. Excel will be able to integrate traffic into its current EMI process, thereby gaining efficiencies of its LEC billing process and allowing for more accurate, efficient and timely billing at potentially lower rates. Customers will benefit from simpler and more understandable billing under the Excel brand name and enhanced customer care. Further, the migration will allow Excel to offer additional products to affected customers at increasingly attractive rates.

Upon completion of the contemplated migration, Excel will provide services on a presubscription basis to the former residential and small business customers of the Telco Companies. While technically the affected customers will be transferred from one telecommunications carrier to another, the transfer will be entirely internal to the Excel family of companies.

Importantly, affected customers will be fully informed of the change. Excel will send a version of the notification letter appended hereto as *Exhibit A* to each of them. The letter will inform customers of the automatic switch in their long distance service provider to Excel on or about October 15, 1999; that there will be no charge to the customer; that there will be no change to the way they dial or the customer service available to them; that long distance charges will continue to appear on their local telephone bills; of the benefits of staying with Excel; and of the option to change long distance carriers. Customers will be further advised that, although Telco residential calling card and 1-800 services will be deactivated on December 1, 1999, all customers will be offered an Excel calling card and toll free service prior to the deactivation date. Finally, the notification letter invites customers to visit Excel's website or dial a toll-free number for more information.

In addition, after the migration, Excel intends to send a version of a second letter, a copy of which is appended hereto as *Exhibit B*, to affected customers, to ensure that consumers fully understand the situation. The post-migration notification letter welcomes customers to Excel and informs them that their long distance charges will continue to appear on their local telephone bills; of any change in their calling plan and rates; and of the advantages of being served by Excel. Further, if the customer is not satisfied with Excel's service within the first 90

days, Excel offers to pay the associated PIC change fee for the affected customer. After the migration, virtually all Excel customers will be provided service at equivalent or lower rates.<sup>3</sup>

Petitioners respectfully submit that the purposes of the Commission's LOA and verification rules would not be served by obtaining prior authorization and verification in order to switch the affected customers of the Telco Companies to Excel, and that the public interest is served by granting a waiver of those rules in these limited circumstances. Further, the Petitioners fear that such a "re-presubscription" effort would prove confusing and frustrating to customers who will, after all, be served by the same family of companies *before and after* the switch. Worse yet, customers who do not understand the need to sign new forms, and fail to respond, could lose service altogether or pay potentially higher casual calling rates. Accordingly, Petitioners believe strongly that any potential benefits of obtaining new authorizations are outweighed by the potential detriments of such a program, and submit that all efforts will be taken to ensure that customers are not inconvenienced or harmed in any way. Indeed, Petitioners' goal is to be able to provide superior service and rates to affected customers as a result of the migration.

It is well-established that waiver of the Commission's Rules is appropriate if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>4</sup> The party requesting waiver must show that the underlying purpose of the rule would not be served or would be frustrated, or that unusual or unique circumstances cause application of the rule to be unfair, unduly burdensome or contrary to the public interest.

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<sup>3</sup> Individual calling patterns vary, and it is possible that a consumer with extremely unusual late night calling activity could experience a marginal rate increase. Excel will take appropriate measures to remedy such a situation, should it be necessary.

In the instant case, the special circumstances requiring a deviation from the Commission's Rules include the need to ensure a seamless transition of long distance service providers for the affected customers. If the Commission grants the waiver, it will protect against the possibility of customers losing long distance service altogether or being charged potentially higher casual calling rates. Moreover, the affected customers will be notified promptly of the process and their rights and options. By transferring customers by notification as described in this request, the policy goals of the Commission's authorization and verification requirements will be met more efficiently and consistent with the public interest. Indeed, the circumstances that justify grant of a waiver to Petitioners are analogous to those that the Commission recently found to justify a waiver for several other carriers.<sup>5</sup>

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(...continued)

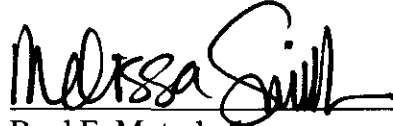
<sup>4</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>5</sup> See, e.g., *AT&T Corporation Request for Waiver*, DA 99-1718, released August 27, 1999; *MCI WorldCom, Inc. Request for Waiver*, DA 99-11549, released August 6, 1999; *Primus Telecommunications Group, Inc. Petition for Waiver*, DA 99-1550, released August 5, 1999; *Citizens Telecommunications Company Alliance Group Services, Inc. Joint Request for Waiver*, DA 99-1521, released July 30, 1999; *Startec Global Operating And PCI Communications, Inc. Request for Waiver*, DA 99-1461, released July 23, 1999.

Accordingly, Petitioners respectfully request that the Commission waive its authorization and verification rules as set forth above. Expedited action on this waiver is requested to the extent necessary to allow Petitioners to effectuate the customer migration on or before *October 15, 1999*. A limited waiver of the Commission's LOA and verification rules will allow a seamless transfer that will be transparent and advantageous to customers.

Respectfully submitted,

EXCEL TELECOMMUNICATIONS, INC.  
TELCO HOLDINGS, INC. D/B/A  
DIAL & SAVE  
LONG DISTANCE WHOLESALE CLUB, INC.

A handwritten signature in black ink, appearing to read "Melissa Smith", written over a horizontal line.

By: Brad E. Mutschelknaus  
Melissa M. Smith  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(202) 955-9667

Its Attorneys

Dated: September 8, 1999

## **EXHIBIT A**



## IMPORTANT INFORMATION REGARDING YOUR LONG DISTANCE SERVICE

Dear Telco Long Distance Customer:

We know how important saving money on long distance is to you. That's why you're a loyal Telco customer. And that's why we're happy to share some exciting news about your long distance service.

Now there's an even better way for you to enjoy the quality long distance service and savings that Telco has provided you since you became a customer. Starting 10/15/99, your long distance service provider will be automatically switched\* to our long distance partner Excel Telecommunications. There is no charge for this change, and nothing you need to do. It's automatic. And, most importantly, this change will allow us to optimize your long distance rates while continuing to provide you with the high quality service you have come to expect.

All the great things you've come to expect from Telco will remain the same. There will be no change to the way you dial, your long distance charges will still appear on your local phone bill, and you'll still have 24-hour-a-day access to our customer care representatives. The only change you will notice will be the name of your long distance carrier. Your Dime Deal calling plan will remain the same

**10 cents per minute** for state-to-state calls,  
in-state rates will vary by state\*  
and low, competitive International\* calling rates  
all for the same \$1.00 monthly service charge you pay now  
24 hours per day; 7 days per week

(Optional Excel Calling Card\*\* and MY800\*\*\* service is available)

Please be advised that the Telco residential calling card and 1-800 services will be deactivated on December 1, 1999. However, all customers will be offered an Excel calling card and the MY800 toll free service prior to the deactivation date.

As always, you have the option to change your long distance carrier at any time. However we feel confident that when you experience the low rates and quality service Excel provides that we will remain your long distance carrier of choice.

We appreciate your business. If you have questions, please call a customer care representative at 1-800-787-7887 or visit Excel on the Internet at [www.excel.com](http://www.excel.com)

Sincerely,

John Doe

\* In order to help us make this transition, if you have a preferred carrier freeze on your account, we ask that you please contact your local phone company and request that the freeze be lifted. We encourage you to reestablish the freeze once this transition is complete.

\*\* For information on specific in-state or international rates please call Customer Service or visit our website.

\*\*\* Calling Card rates are \$0.89/ first minute and \$0.31/ each additional minute (a 50% discount is given on the additional minute rate for calls to ExcelPLUS, ExcelPLUS II, Simply One, Excel Dime Deal and Premier PLUS II customers.)

\*\*\*\* Excel's MY800 rates are \$0.24/minute peak and \$0.19/minute off-peak

## **EXHIBIT B**

## IMPORTANT INFORMATION REGARDING YOUR LONG DISTANCE SERVICE

Dear Telco Long Distance Customer:

We know how important saving money on long distance is to you and that is why we are happy to share some exciting news about your long distance service. As a Telco customer, you have been under the Excel Communications umbrella of companies since November 1997. In order to take advantage of the new customer care and billing technologies available through Excel, on October 15, 1999 all of Telco's residential long distance customers were automatically moved to Excel Telecommunications.

This consolidation now provides you with an even better way to enjoy the quality long distance service and savings that Telco has always provided you. There is no change in the way you place calls and your long distance charges will still be on your local telephone bill. The only change you will notice will be the name of your long distance carrier.

Your Dime Deal calling plan will remain the same

**10 cents per minute** for state-to-state calls,  
in-state rates will vary by state\*  
and low, competitive International\* calling rates  
all for the same \$1.00 monthly service charge you pay now  
24 hours per day; 7 days per week

(Optional Excel Calling Card\*\* and MY800\*\*\* service is available)

Excel is an innovative company determined to give you the best service, savings and choices you expect from a full service provider. We are now one of the largest long distance providers in North America and with our recent merger with Teleglobe, we are even stronger and more capable than ever before. We even offer you a satisfaction guarantee. If, within the first 90-days, you are not satisfied with Excel's service we will pay the fee to switch you to the long distance carrier of your choice.

Again, welcome to Excel! Should you have any questions or wish to order an Excel calling card or MY800 service please call our Customer Service department at 1-800-875-9235 or for hearing impaired 1-800-520-4001. For more information on Excel and the products that we offer, please visit our website at [www.excel.com](http://www.excel.com). We look forward to meeting your needs and strengthening our relationship with you.

Sincerely,

Excel Telecommunications, Inc.

\* For information on specific in-state or international rates please call Customer Service or visit our website.

\*\* Calling Card rates are \$0.89/ first minute and \$0.31/ each additional minute (a 50% discount is given on the additional minute rate for calls to ExcelPLUS, ExcelPLUS II, Simply One, Excel Dime Deal and Premier PLUS II customers.)

\*\*\* Excel's MY800 rates are \$0.24/minute peak and \$0.19/minute off-peak

**CERTIFICATE OF SERVICE**

I, Melissa Smith, hereby certify that on this 8<sup>th</sup> day of September, 1999 a copy of the foregoing **PETITION FOR EXPEDITED WAIVER** was delivered by hand to the following:

Lawrence E. Strickling  
Federal Communications Commission  
Room 5C-345  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Glenn Reynolds  
Federal Communications Commission  
Room 5A-847  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Anita Cheng  
Federal Communications Commission  
Common Carrier Bureau  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

International Transcription Services, Inc.  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036

Robert C. Atkinson  
Federal Communications Commission  
Portals II  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

  
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Melissa Smith